IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 166 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GULBIRSINGH HARBAJANSINGH VIRK

Versus

SUVARNSINGH MELASING

Appearance:

MR MB GANDHI for Petitioner

MR NR TANDEL for Respondent No. 1 (served)

CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 19/04/2001

ORAL JUDGEMENT

1. The petitioner (original defendant-tenant) has filed this Civil Revision Application under Section 29(2) of the Bombay Rents (Hotel & Lodging House Rates Control) Act, 1947 ('Act' for short), challenging the judgment and

decree dated January 9, 1990, passed by the Appellate Bench of the Small Causes Court, Ahmedabad, dismissing the Civil Appeal No.41 of 1985 filed by the original defendant, and confirming the judgment and decree dated December 27, 1984, passed by the learned Judge, Court No.8, Small Causes Court, Ahmedabad, in H.R.P. suit No.493 of 1980, directing the defendant to hand over the vacant and peaceful possession of the suit premises described in plaint paragraph 14, and decreeing the suit filed by the plaintiff, on the ground that the defendant had acquired suitable residence and the suit premises were not used for continuation of a period of six months prior to filing of the suit.

2. The respondent (original plaintiff) is the land lord of the suit premises bearing Municipal Census No.305/139 and Survey No.339/236, situated at Ahmedhusen's Chawl, Dudheshwar, Ahmedabad. The suit premises were leased out to the defendant on a monthly rent of Rs.45/-. As the defendant had acquired a suitable accommodation, the respondent filed H.R.P. Suit No.493 of 1980 in the Small Causes Court, Ahmedabad, to recover possession of the suit premises.

3. At the trial, on appreciation of oral as well as documentary evidence, the learned Judge, Court No.8, Small Causes Court, by judgment and decree dated December 27, 1984, held that the defendant had acquired suitable accommodation and, therefore, the plaintiff is entitled to decree of eviction under Section 13(1)(l) of the Act. The learned trial Judge also fixed the standard rent of the suit premises at Rs.45/- per month.

4. The decree of eviction passed by the trial court was challenged by the original defendant before the Appellate Bench of the Small Causes Court, Ahmedabad, by filing Civil Appeal No.41 of 1985. The said appeal came to be dismissed by the Appellate Bench of the Small Causes Court, by judgment and decree dated January 9, 1990, which has given rise to filing of this Civil Revision Application by the original defendant.

5. Having heard the learned counsel for the petitioner and having gone through the record and proceedings of the Courts below, in my opinion, the judgments and decree of the courts below are according to law based on proper appreciation of evidence. No error has been committed by the Courts below in passing of decree of eviction against the defendant (tenant), when it was proved by the plaintiff (landlord) that the tenant had acquired suitable premises and the suit premises were

not used for continuous period of six months prior to filing of the suit. These being concurrent findings of fact recorded by both the courts below, I do not find any merit in this Civil Revision Application to interfere with the same. The Supreme Court, in the case of Patel Valmik Himatlal vs. Patel Mohanlal Muljibhai, (1998) 7 Supreme Court Cases 383, has laid down that powers of the High Court under Section 29(2) of the Rent Act are revisional powers with which the High Court is clothed. It empowers the High Court to correct errors which may make the decision contrary to law and which errors go to the root of the decision, but it does not vest the High Court with the power to rehear the matter and reappreciate the evidence. The mere fact that a different view is possible on reappreciation of the evidence cannot be a ground for exercise of the revisional jurisdiction. The High Court cannot substitute its own findings on a question of fact for the findings recorded by the courts below on reappraisal of evidence. Since both the courts below had recorded concurrent findings of fact, in view of the principles laid down by the Supreme Court in Patel Valmik Himatlal's case (supra), it will not be open to this Court to reopen the case and record a contrary finding.

6. As a result of foregoing discussion, this Civil Revision Application fails and is hereby dismissed. The interim relief is vacated. Rule is discharged with no order as to costs.

April 19, 2001 (M.H. Kadri, J.)
(swamy)